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Honorable Marc L. Barreca
Chapter 7
Hearing Location: Seattle, Rm. 7106
Special Set Hearing Date: April 24, 2024
Hearing Time: 1:30 p.m.
Response Date: April 17, 2024

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In re:

ASSET REALTY LLC

Debtor.

Case No. 23-10326-MLB

**2nd DECLARATION OF JACKIE BERTET
IN FURTHER SUPPORT OF MOTION OF
CENTURY 21 REAL ESTATE LLC FOR
ALLOWANCE AND PAYMENT OF
ADMINISTRATIVE EXPENSE CLAIMS**

I, Jackie Bertet, of full age, declare that:

1. I am the Senior Director of Anywhere Brands LLC, affiliate of Century 21 Real Estate, LLC (“C21” or the “Franchisor”). I make this 2nd Declaration in further support of C21’s motion for allowance and payment of administrative expense claims (the “Motion”) pursuant to which C21 seeks an order allowing, and authorizing payment of a Chapter 7 administrative claim and a Chapter 11 administrative claim on behalf of C21 in the with bankruptcy case. This declaration is based upon my personal knowledge and a review of the documents relative to the above captioned action.

2. On or about February 21, 2024, counsel for the Trustee provided counsel for C21 with a schedule of revenue received by the Trustee after the Conversion Date (the “Post Conversion Schedule”). The email forwarding the schedule represented that the revenue consisted of “brokerage sales.” That is, after the Conversion Date, there were numerous closings of real estate transactions

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CLAIMS - 1
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1 arising from contracts that were executed prior to the Conversion Date (the “Post-Conversion
2 Closings”). Pursuant to a schedule provided by Trustee’s counsel, C21 calculated that the Post-
3 Conversion Closings generated total real estate brokerage commissions in the amount of \$185,713 of
4 which, \$29,852.75 apparently was remitted to and received by the Trustee as representing the Debtor’s
5 net share of said total commissions or the Debtor’s “brokerage split.” A true copy of the Post
6 Conversion Schedule is attached to my prior Declaration (ECF No. 222) as **Exhibit C**.

7 3. Pursuant to the Franchise Agreement in effect at the time the contracts for the pending
8 transactions were executed, C21 is entitled to \$11,143 in royalties on account of the total real estate
9 brokerage commissions generated from the Post-Conversion Closings (the “Chapter 7 Post-Petition
10 Obligations”). A statement setting forth the calculation of the amount(s) due to C21 from the Post-
11 Conversion Closings is attached to my prior Declaration as **Exhibit D**. Notably, the calculations were
12 based exclusively on the column labeled “total commissions” as that is the baseline metric for royalty
13 calculations under the Franchise Agreement. If there was no value in that column, that line item was not
14 considered in the royalty calculation. Based on my review, there is one line item on the Post Conversion
15 Schedule that did not have a value in the “total commission” column. That line item was not considered
16 in C21’s royalty calculations.

17 4. The Trustee’s Objection to the Motion has apparently alleged that the revenue line items
18 on the Post Conversion Schedule did not necessarily indicate commissions from real estate brokerage
19 sales, even though that is what was represented by Trustee’s counsel when the Post Conversion
20 Schedule was provided and C21 relied on that representation. In any event, C21 has run a report from
21 its internal systems as to post-Conversion real estate closings on listings/contracts of the Debtor
22 brokerage entity (the “C21 Report”). A copy of that report is attached hereto as Exhibit 1. The attached
23 report confirms that the line items on the Post Conversion Schedule used by C21 in its commission
24 calculation does, in fact, represent a real estate closing as to listings/contracts of the Debtor brokerage
25 entity.
26

5. Certain of the transactions match directly as set forth below:

<u>Post Conversion Schedule</u>	<u>C21 Report</u>
1	9
2	10
3	6
4	7
5	8 ¹
10	5 ²

There is one line item without a total commission value that was excluded from C21's royalty calculations.

6. There are 5 other lines each from the Post Conversion Schedule and C21 report that do not match exactly but seem to match approximately. Specifically, lines 6,7,8,11 & 12 from the Post Conversion Schedule and lines 1,2,3,4 & 12 from the C21 Report. These discrepancies could be because there was some adjustment made by the Debtor before reporting. Also, some transactions may not have been reported or may have been reported inaccurately. C21 concedes that there may have to be some manner of reconciliation, but that reconciliation would not impact C21's entitlement to royalties. Notably, the unmatched lines in the Post Conversion Schedule reflect @\$76,000 in total commissions whereas the C21 report reflects @\$84,000 in total commissions in the AGC column. C21's royalty calculations for the Motion were based on the lower values set forth in the Post Conversion Schedule.

¹ There is a slight discrepancy in the total commission subject to royalty between the two charts. The Post Conversion Schedule provided by the Trustee recites a total commission of \$55,500. On the C21 Report, that value is reported in the AGC column at \$64,750. C21's royalty calculations in the Motion are based on the lower amount from the Trustee's schedule.

² Similar to footnote 1, there is a slight discrepancy in favor of the Trustee. The Post Conversion Schedule lists total commission of \$14,250. C21's AGC value is \$14,750. Again, C21 used the lower figure provided by the Trustee in its royalty calculations.

7. The revenue consisting of the brokerage splits received by the Trustee is connected to a transaction between C21 and the debtor-in-possession, namely the Franchise Agreement. C21 provided value and consideration to the debtor-in-possession under the Franchise Agreement. The consideration and value provided by C21 under the Franchise Agreement directly and substantially benefitted the estate by facilitating the generation of \$29,852.75 in receivable for real estate brokerage commissions that the Trustee was able to collect.

8. The Debtor was afforded the benefit of using the C21 Marks and C21 System pursuant to the Franchise Agreement, as well as the goodwill and credibility of C21 inherent in the Debtor's continued association with C21/franchised operations in the post-petition period. C21 fulfilled its obligations under the Franchise Agreement and the estate is obligated to remit payment therefor.

9. Additionally, over and above the contractual obligations inherent in the Franchise Agreement, the value provided by C21 under the Franchise Agreement manifests a “substantial contribution” to the estate via the Debtor’s continued use of the C21 Marks and C21 System and the Debtor’s continued association with C21 and its goodwill during the pendency of the Chapter 11 case. The value received by the Debtor under the Franchise Agreement has led to the generation of revenue for the benefit of the estate in the post-petition period.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

EXECUTED April 19, 2024, at Long Branch, New Jersey.

/s/ Jackie Bertet

Jackie Bertet

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a practice assistant in the law firm of K&L Gates LLP, and on April 19, 2024, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 19th day of April, 2024 at Seattle, Washington.

/s/ Chloe C. Morse
Chloe C. Morse

Exhibit 1

Fee Id- Seq # - Co # - Off #	Tr Type	Purchase Order	dash Tr#	Description	Trans Date	TR Amt	Balance Due	Days Late	Class	Due Date	Seq	Status	Number	Comments	AGC
C00009259212-001-301918-0001	TRF	C00009259212	T09386	T09386 - Residential Sale - 7844 S Wilkeson St Tacoma [S]	20-Dec-23	724.5	724.5	120	Invoice	20-Dec-23	1	Open	211905160	T09386	12075
C00009307374-001-301918-0001	TRF	C00009307374	FBHEPQ-T09354	FBHEPQ-T09354 - Residential Sale - 19719 119th St E Bonney Lake [L]	22-Dec-23	762	762	118	Invoice	22-Dec-23	1	Open	211920566	FBHEPQ-T09354	12700
C00009307369-001-301918-0001	TRF	C00009307369	T09381	T09381 - Residential Sale - 2206 S Melrose St Tacoma [S]	28-Dec-23	337.05	337.05	112	Invoice	28-Dec-23	1	Open	211920562	T09381	5617.5
C00009307373-001-301918-0001	TRF	C00009307373	LT7TW6-T09350	LT7TW6-T09350 - Residential Sale - 16703 NE 22nd St Bellevue [L]	29-Dec-23	2,178.00	2,178.00	111	Invoice	29-Dec-23	1	Open	211920565	LT7TW6-T09350	36300
C00009307381-001-301918-0001	TRF	C00009307381	SY7RY8-T09390	SY7RY8-T09390 - Residential Sale - 42501 SE 170th Ct North Bend [L]	2-Jan-24	882	882	107	Invoice	2-Jan-24	1	Open	211920574	SY7RY8-T09390	14700
C00009329884-001-301918-0001	TRF	C00009329884	T09414	T09414 - Residential Sale - 6419 S Lawrence St Tacoma [S]	16-Jan-24	652.5	652.5	93	Invoice	16-Jan-24	1	Open	211927410	T09414	10875
C00009329908-001-301918-0001	TRF	C00009329908	T09408	T09408 - Residential Sale - 703 115th St E Tacoma [S]	17-Jan-24	765	765	92	Invoice	17-Jan-24	1	Open	211927418	T09408	12750
C00009329959-001-301918-0001	TRF	C00009329959	JE6P5F-T09366	JE6P5F-T09366 - Residential Sale - 735 1st St S Unit #102 Kirkland [L]	23-Jan-24	3,885.00	3,885.00	86	Invoice	23-Jan-24	1	Open	211927428	JE6P5F-T09366	64750
C00009323909-001-301918-0001	TRF	C00009323909	T09403	T09403 - Residential Sale - 9999 Hancock St Port Townsend [S]	24-Jan-24	412.5	412.5	85	Invoice	24-Jan-24	1	Open	211925607	T09403	6875
C00009329811-001-301918-0001	TRF	C00009329811	PJCXKR-T09429	PJCXKR-T09429 - Residential Sale - 11825 SE 184th St Renton [L]	30-Jan-24	541.2	541.2	79	Invoice	30-Jan-24	1	Open	211927391	PJCXKR-T09429	9020
C00009307385-001-301918-0001	TRF	C00009307385	T09401	T09401 - Residential Sale - 6627 83rd Street Ct E Puyallup [S]	5-Feb-24	1,120.50	1,120.50	73	Invoice	5-Feb-24	1	Open	211920576	T09401	18675
C00009306906-001-301918-0001	TRF	C00009306906	T09428	T09428 - Residential Sale - 13408 173rd St E Puyallup [S]	7-Feb-24	1,059.00	1,059.00	71	Invoice	7-Feb-24	1	Open	211920448	T09428	17650